

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

CRL.A.No. 1069 of 2004(A)

**SC.360/2003 of ADDL. SESSIONS COURT, ADHOC II, THODUPUZHA.
CP.18/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I,
DEVICOLAM .**
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APPELLANT:

**THANKASWAMY, S/O. VELLASWAMY,
C.NO.8178, CENTRAL PRISON, TRIVANDRUM-695 012.**

BY ADV. ADV.SAIRA RAVIKUMAR(STATE BRIEF)

RESPONDENTS:

**STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR.**

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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J.B. KOSHY & V. GIRI, JJ.

Cr1. Appeal No.1069 of 2004

Dated this the 8th day of August, 2007

Judgment

Koshy, J.

Appellant in this case was convicted and sentenced to undergo imprisonment for life under section 302 of the Indian Penal Code. Allegation was that he poured kerosene on 12.1.2003 at about 7.30 p.m. all over the body of his wife and set fire while she was in the bedroom of the house at Kanthalloor. She died on 28.1.2003 at Tata Tea Hospital due to the burn injuries. In 313 statement, the accused did not give any explanation for the burn injuries sustained by his wife in the residential house, but, stated that he is innocent. No defence witnesses were examined. PW1 is the sister-in-law of the deceased Veeramma who was living close to the residential house of the deceased. She deposed that accused, deceased and a child was staying in that house and they were close neighbours. While she was sitting in the house, she heard cries and she rushed to the place. At that time, she saw accused and the deceased and there was fire on the deceased and she was

completely burnt and husband was standing nearby and accused was preventing the deceased from moving away, but, denials from 161 statement she denied having stated to the police that she has seen the accused pouring kerosene on the deceased and setting fire. Therefore, she was declared hostile, but, she stated that accused used to take liquor and used to quarrel with the deceased. She also stated that she saw her lying with burn injuries in the kitchen room. At that time, mother came and mother has taken the deceased to their house. She also identified the dress worn by the deceased. She stated before the police that Veeramma has set fire with the intention to kill her. In cross-examination by the accused, she stated that she never stated that the accused poured water all over the body of the deceased, but, according to her, others who gathered there poured water on the body of the deceased. She further stated that bedroom is also the kitchen room. She again stated that at the time of incident also, there was smell of liquor with the accused. She also stated that deceased would have escaped from the burn injuries if she was treated in the hospital, but, she was not taken to the hospital, but, she was only given herbal treatment in the

house. She was not taken to the hospital because of the objection taken by the mother. It is also stated that the deceased had no disease. She further stated that at 4 o'clock deceased and accused were quarreling. At 6 o'clock, she heard the cry and she rushed to the place.

2. PW2 is the son of the accused. With regard to his examination, the Sessions Court summarised the evidence as follows:

"PW2 is the son of the accused. He was unable to depose before the court as he was frightened when he was put into witness box. Hence he was called in chamber and questions were put to him. He would state that he did not see the accused pouring kerosene over the body of his mother and lighting her with match box. But it is stated by him that his father is an alcoholic and he often quarrels with his mother. It has come out from his mouth that on the alleged day there was a quarrel at the instance of the accused and he assaulted his mother. He left the house as accused scolded him and pursued him to run away from the house."

PW3 deposed that he saw the wife of the accused in her house with fire all over the body. At that time, accused was also there inside the house, but, he also denied his

statement before the police that he saw the accused pouring kerosene over the body of the deceased and setting her fire. PW4 is an inquest witness who proved Ext.P3 inquest report. PWs 3 and 6 are the brother and mother of the deceased Veeramma. PW3 also stated that he saw Veeramma while she was in her house with fire all over the body when he came to the scene on hearing the loud noise of quarrel in the house of the accused. He also stated that deceased told him that the accused set fire on her body. Because of his deviation from the statement given before the police, he was also declared hostile. PW6 mother of the deceased also became hostile. According to her, on hearing that Veeramma was caught fire, she rushed to the place of occurrence. She saw Veeramma with fire all over the body. According to her, she herself treated her for three days by applying native treatment. She further stated that accused and deceased used to quarrel usually.

3. PW8 is the medical officer and Surgeon of Tata Tea Hospital who treated the deceased when she was admitted in the hospital on 15.1.2003. PW8 deposed that the deceased was admitted in the hospital of alleged homicidal attempt by her husband three days prior to the

admission in the hospital by pouring kerosene all over the body and lighting it. This was recorded in Ext.P7 treatment certificate. PW8 further deposed that deceased was having second and third degree injuries as recorded in Ext.P8 certificate and there were burn injuries on 58% of body surface area. It was further stated that on the morning of 28.1.2003, deceased developed breathing difficulties suggestive of septicemia and her general condition was deteriorated and she expired at 6.00 p.m. on 28.1.2003. Ext.P8 treatment certificate supports the version of PW8. PW15 is the medical officer attached to the Tata Tea Hospital. It is on her instance deceased was admitted in the hospital on 15.1.2003. PW8 also stated that when she was admitted, the deceased herself stated that her husband poured kerosene all over the body and set fire and burns were sustained on 12.1.2003. Evidence of PWs 15 and 18 would reveal that Veeramma was admitted in the Tata Tea Hospital on 15.1.2003 with burn injuries and she herself gave the history to the doctor as her husband poured kerosene over her body and set fire. At the instance of PW15, intimation was given to the police and soon after getting the intimation from the hospital, PW11 head constable came to the hospital and

recorded Ext.P11 statement by the deceased. The said statement was recorded by him on 16.1.2003 at about 4.00 p.m. She stated that at about 7.30 p.m. on 12.1.2003 her husband came to the house after consuming alcohol and thereafter he poured kerosene on her body and lighted. On seeing fire all over the body, their children cried aloud and run out of the house. Accused also ran out. When deceased attempted to run out, accused forced her to remain inside the house. Accused also sustained some burns. According to PW11, when Ext.P11 statement was given, deceased was conscious and on the strength of the above, investigation was started for the offence punishable under section 307 of the Indian Penal Code. PW13 Judicial Magistrate of the first class also recorded dying declaration. On 23.1.2003, before recording declaration, he convinced himself that the patient was conscious and was able to give rational answers. Ext.P19 is the dying declaration. It is also deposed by him that the doctor also stated that she was capable of giving answers and she was conscious and she was in a fit state to give statements. PW14 doctor also deposed that he gave a certificate Ext.P19(a) annexed to Ext.P9 certifying that she is able to give a correct statement.

4. Even though PWs 1 to 6 became hostile, their evidence prove that the deceased and accused were living together with the children in the house where the incident occurred and they also stated that usually there were quarrels between husband and wife for one reason or other and accused used to consume alcohol and quarrel will start. It has further come out in evidence that they heard cries and they rushed to the place and saw the deceased with burn injuries and accused preventing her from escaping. Various dying declarations given to PWs 11 and 13 police and Judicial Magistrate and statements given to the doctors of Tata Tea Limited clearly show that accused poured kerosene all over her body and set fire on her. Merely because It is stated in the statement before the police that the incident took at 7.30 a.m., instead of 7.30 p.m., there is no discrepancy in the statement given to the Judicial officer who recorded the statement after convincing himself from the certificate of doctor as she was capable of giving such a statement. There is no suggestion that such statement was given by her at the instance of anybody else as all near relatives turned hostile and they were trying to help the accused. Ext.P9 is the postmortem certificate

proved by PW9 doctor which also supports the prosecution case that she died of burn injuries. There is no material divergence between the various dying declarations given. While giving 313 statement, accused had no explanation regarding burn injuries caused to his wife even though he was also present at the time of occurrence who also got some burn injuries in the process. He prevented the deceased even from going out. Evidence in this case clearly show that accused is guilty of charges levelled against the accused and the charges were conclusively proved beyond reasonable doubt. Hence, we agree with the findings of the Sessions Court and affirm the conviction and sentence passed on the accused.

Appeal is dismissed.

J.B.KOSHY
JUDGE

V. GIRI
JUDGE

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Crl.Appeal No.1069/2004

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**J.B. KOSHY AND
V.GIRI , JJ.**

Crl. Appeal No.1069/2004

Judgment

Dated:8th AUGUST, 2007